

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

**BFI WASTE SERVICES OF
NORTH AMERICA, INC.,
ABILENE DIVISIONS¹**

Abilene, Texas

Employer

and

Case 16-RC-10589

**COMMUNICATION WORKERS
OF AMERICA,
LOCAL UNION NO. 6202**

Petitioner

DECISION AND DIRECTION OF ELECTION

The Petitioner, Communication Workers of America, Local Union No. 6202, filed a petition under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all drivers, mechanics/shop employees, office clerical, and dispatcher located at the Employer's hauling facility at 5001 Pine Street in Abilene, Texas, and all operators and check/scale house employees located at the Employer's landfill at 277-83 North and FM 3034, Abilene, Texas. The Petitioner seeks to exclude all supervisors, confidential employees, and guards as defined by the Act.

The Employer asserts that the petitioned-for multiple facility unit is not appropriate, and that each facility, the hauling company and the landfill, should constitute separate bargaining units. Additionally, the Employer contends that the office clericals, a sales/customer service

¹ The Employer's name appears as amended at the hearing.

representative and a dispatcher, should be excluded from the proposed bargaining unit. Specifically, the Employer argues that the office clericals do not have a community of interest with the other members of the proposed bargaining unit sufficient to justify their inclusion. The Employer also argues that the dispatcher, in addition to being an office clerical, is a supervisor² as defined by Section 2(11) of the Act. A hearing officer of the National Labor Relations Board conducted a hearing on this matter and the parties filed briefs with me.

I. ISSUE PRESENTED

The issues presented before me in this case are: (1) whether the petitioned-for multiple facility unit is appropriate; (2) whether the office clericals share a community of interest with the other members of the proposed bargaining unit sufficient to justify their inclusion in the bargaining unit; and (3) whether the dispatcher should be excluded from the bargaining unit as an office clerical and/or a supervisor as defined by Section 2(11) of the Act.

II. THE REGIONAL DIRECTOR'S FINDINGS

I have considered the evidence and arguments presented by the parties on these issues. As discussed below, I have concluded that the multiple facility unit is not appropriate. I also conclude that the sales/customer service representative at the hauling company is an office clerical, and therefore, should be excluded from the bargaining unit. However, I conclude that the dispatcher is a plant clerical, not a 2(11) supervisor, and therefore, should be included in the bargaining unit.

III. STATEMENT OF FACTS

² The parties stipulated that Brad Kuykendall, Facility Manager, David Kelly, Operations Manager, Ricky Plank,

The Employer operates a waste hauling facility in Abilene, Texas, located approximately one and one-half miles from its landfill in Abilene, Texas. The Employer collects residential, commercial, and industrial waste from the surrounding communities. Its drivers transport and dispose of the waste at the Abilene landfill. Waste hauled by the Employer's drivers accounts for 18 to 20 percent of the landfill's intake. The hauling facility and the landfill are part of the West Texas Division of Allied Waste Systems, which encompasses seven different facilities in the areas of Abilene, Lubbock, and Amarillo, Texas.

Ray Allen has been the general manager of the West Texas Division for approximately three years. Allen maintains an office in Amarillo. He has no office at either of the Abilene facilities but visits those facilities at least once a month, usually remaining in Abilene for two or three days. He is not involved in the daily management of either facility and does not generally involve himself in the hiring, firing, discipline, or any other employment action involving those employees. In the three years since he has been general manager, Allen has been involved in only one hiring in Abilene, that of the facility manager of the hauling company.

A. THE HAULING FACILITY

The Employer has approximately 37 employees at the hauling facility, including 21 rear-load drivers, 3 side-load drivers, 3 roll-off drivers, 3 mechanics, 1 container repair/delivery employee, a dispatcher, and a sales/customer service representative. Management at the facility consists of the facility manager, the operations manager, the maintenance manager, and the driver supervisor. The hauling company occasionally employs temporary employees. Brad Kuykendall is the facility manager with independent authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline the hauling facility employees.

Driver Supervisor, and David Greenough, Maintenance Supervisor, of the hauling facility and Steve Davis,

Although he has authority to discipline landfill employees, he has never done so. The record does not reflect that Kuykendall has any other supervisory authority over landfill employees.

All hauling company employees work out of a single building that contains the offices, maintenance shop, restrooms, break room, and parking areas for the trucks and waste containers. All employees, including management, after 90 days of employment, are eligible for the same benefits, including health, dental, vision, disability insurance, life insurance and a 401(k) plan. Drivers, maintenance employees, and the dispatcher are paid weekly. All management employees and the sales/customer service representative are paid bi-weekly. All hourly workers are required to punch a time clock before starting and ending work. They all use the same time clock.

1. Drivers

The hauling facility drivers operate three kinds of trucks to collect, transport, and dispose of waste: rear-loads, side-loads, and roll-offs. Drivers must possess either a Class A or Class B commercial driver's license (CDL). Drivers are also required to have one year of experience or truck driving school, pass a Department of Transportation physical, pass a drug test, and wear a company-issued uniform, which is a company-furnished shirt and blue jeans.

All drivers but one begin work at 5:00 a.m. The remaining driver begins work at 6:30 a.m. Drivers work until their daily assigned route is complete which can range from 1:00 p.m. to 7:00 p.m., depending on the route load. Drivers are scheduled to work Monday through Friday and are paid between 9 and 15 dollars per hour, usually working about 10 hours of overtime per week.

Landfill Manager, are Section 2(11) supervisors, because they have the authority to hire, fire, and discipline.

Operations Manager Kelly and Driver Supervisor Ricky Plank supervise the drivers. Plank reports to Kuykendall. Kelly answers directly to Allen. Neither Kelly nor Plank is involved in landfill operations nor has supervisory authority over landfill employees.

Before leaving for the day, drivers conduct a pre-check on their truck to ensure that it is running properly. Upon their return at the end of their route, drivers conduct a similar post-check. Drivers are required to report any mechanical problems to the maintenance department.

a. Rear-load trucks and drivers

With rear-load trucks, employees load waste into the rear of the truck, as the name implies. The hauling facility employs 21 rear-load drivers. Two employees are generally required to operate a rear-load truck. While one employee drives, the other collects the waste by hand and deposits it into the rear of the truck. After collecting the waste from designated locations on a route or when the truck is full, the rear-load driver, along with his helper, hauls the waste to the Abilene landfill. At the landfill, the driver stops at the scales to weigh the truck, obtains a charge ticket from the scale clerk, and proceeds to the working face of the landfill to dump the waste. The driver then operates hydraulic lifts that raise the rear of the truck and push the waste out using a hydraulic blade. The driver returns to his collection route or, if the route is complete, returns to the hauling company office to finish his post-trip paperwork and fill the truck with gas. Rear-load drivers usually make only one trip to the landfill per day.

b. Side-load trucks and drivers

Side-load trucks require only one driver. However, on hot days, the hauling facility may assign another employee to accompany the driver. The three side-load drivers collect waste by operating a hydraulic carriage on the left side of the truck. They use the hydraulic carriage to reach out and secure the targeted container, then lift the container to the top of the truck where it

is tipped to allow the waste to fall into the opening in the top of the truck. The container is then returned to the ground. After collecting the waste from designated locations or when the truck is full, the side-load driver travels to the Abilene landfill to empty the truck. At the landfill, the driver stops at the scale house to weigh the truck, obtains a charge ticket from the scale clerk, and then proceeds to the working face of the landfill to dump the waste. The driver empties the truck and then either returns to his collection route or, if the route is complete, returns to the hauling company office to finish his post-trip paperwork and fill the truck with gas. Side-load drivers usually make only one trip to the landfill per day.

c. Roll-off trucks and drivers

Roll-off trucks require one driver for operation, except on hot days. Roll-off trucks comprise two parts: the truck and a container that is about eight feet wide and 22 feet long. To collect the trash, the three roll-off drivers go to a customer location, hook a cable to the container, and then drag the entire container onto the back of the truck. After securing the container, the driver proceeds to the landfill. The driver then usually returns the container to its previous location. On an average day, a roll-off truck driver empties approximately five to six containers. When roll-off drivers complete their day, they return their trucks to the hauling facility, do post-check paper work, and fill the truck with gas.

2. Maintenance Employees

The maintenance department consists of three mechanics and one container repair/delivery employee. Maintenance Manager David Greenough supervises all maintenance employees. Greenough reports to Kuykendall. All maintenance employees are required to have a CDL so that they may drive the trucks when they are working on them. All but one

maintenance employee have a CDL, and the remaining mechanic has been instructed to obtain one. Maintenance employees are required to possess their own tools and know how to weld.

Maintenance employees are paid between 9 and 12 dollars per hour. They are required to wear the company-issued uniform. One mechanic starts work at about 5:00 a.m. and works until 2:00 or 2:30 p.m. The other two mechanics start at about 2:00 p.m. and work until about 10:30 p.m. One mechanic works approximately seven hours of overtime per week.

The three mechanics perform truck repair and maintenance. The container repair/delivery employee is generally responsible for the repair and maintenance of waste containers. In addition to repair, the container repair/delivery employee delivers small containers to customers as requested.

3. Office Personnel

The hauling facility office personnel consists of one dispatcher and one sales/customer service representative who work in the central office with the four members of management. Facility Manager Kuykendall and Operations Manager Kelly supervise the office personnel. Office personnel are not required to wear the company-issued uniform and work from 8:00 a.m. to 5:00 p.m., Monday through Friday. The sales/customer service representative is paid \$10.11 per hour. She works between zero and five hours of overtime per week. The dispatcher is paid \$7.28 per hour and averages two and one-half hours of overtime per week.

a. Dispatcher

The dispatcher's duties include preparing and issuing route sheets and route changes. She checks the accuracy of time sheets and verifies that employees clock in and out. The dispatcher is responsible for batching service tickets and ensuring that the drivers have them before they leave each morning. The tickets are returned to the dispatcher after a driver

completes his route. Some customers must sign the service ticket and other customers receive copies.

When the drivers return the service tickets to the dispatcher, she enters them into a computer program and generates a report, which the managers use for accounting purposes. The dispatcher maintains adequate supplies and forms for drivers to use. She completes “lost business forms” when customers cancel their service as well as answers the office telephone and fields customer complaints.

In preparing and issuing route sheets, the dispatcher develops and distributes weekly and daily route and truck assignments to the drivers. The dispatcher issues assignments to the rear- and side-load truck drivers on a weekly basis, usually on the Friday prior to the week assigned. She usually issues the assignments by 10:30 a.m., but may issue them as late as 4:00 or 4:30 p.m., requiring her to contact the drivers at home to give them their assignments. The dispatcher issues roll-off assignments on a daily basis. Most customers with roll-off containers are required to give 24-hour notice to schedule a pick-up, although for certain customers, same day pick-up is available. Most drivers drive the same routes or are in the same area every day. The dispatcher uses her knowledge of the typical driver routes and the training provided to her by Kelly to issue the daily and weekly assignments. She generates the assignment sheet using a spreadsheet file on her computer.

If a driver is absent, the dispatcher adjusts the assignments to ensure all routes are covered. If a driver misses a customer, the dispatcher must ensure that a driver picks up the missed waste. To make the necessary changes, the dispatcher relies on the training she received from Kelly, who had been a dispatcher previously for the Employer, and her knowledge of the drivers’ abilities and route locations. The record shows that the dispatcher generally makes these routine

changes to the assignment sheet without her supervisor's approval. However, if the changes prove to be particularly difficult, she consults her supervisor for direction. These changes may take place before the initial assignments are issued, depending on when the dispatcher becomes aware of the need. The record does not reflect how frequently changes are made to the weekly routes. The record does reveal that the dispatcher makes changes to the daily route assignments about once a week.

b. Sales/Customer Service Representative

The sales/customer service representative's duties include selling the Employer's services by providing current and potential customers with information about the services, including rates, that the Employer provides, drafting and delivering service agreements, and answering the phone. She also does data entry, acts as the petty cash custodian, takes deposits to the bank and provides other office support services.

B. THE ABILENE LANDFILL

The landfill has eight employees, including six landfill operators, one checker/scale house employee, and the landfill manager, Steve Davis. Davis has the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline the landfill employees. Davis reports directly to Allen. He has the authority to discipline hauling facility employees, but has never done so. The record does not reflect that Davis has any other supervisory authority over hauling company employees. The landfill facility consists of a scale house with offices, break room, restroom, and a break trailer. The disposal area is located about a half to three-quarters of a mile away from the scale house. The landfill is open from 7:00 a.m. to 5:45 p.m., Monday through Friday.

The six landfill operators run heavy equipment including a compactor used to compact waste in the hole, a bulldozer to spread the waste, a motor grader to maintain and repair roads, two scrapers to dig dirt from one area and move it to another, backhoes, and a dump truck. Landfill employees are entitled to the same benefits as the hauling company employees, including health, dental, vision, disability insurance, life insurance and a 401(k) plan. Landfill employees are not required to have any class of CDL and punch a time clock. Landfill employees are paid between 9 and 13 dollars per hour.

Twenty percent of the landfill's business comes from the hauling company. The remaining waste comes from other customers. The process for dumping waste at the landfill is generally the same for all customers including the hauling company. The landfill accepts two types of waste: general waste and special waste. Special waste is waste that is reactive, corrosive or flammable or has some other quality that requires special handling. To dispose of special waste at the landfill, a generator of the waste must have on file a current certification obtained through the Employer. When dumping special waste, the driver must present to the checker/scale house employee a manifest form that provides the landfill with the necessary information.

1. Landfill Operators

Landfill operators are required to wear the same company-issued uniform as the hauling company drivers and maintenance employees. Two operators start work at 6:30 a.m. and do a "pre-trip" on the equipment to ensure it runs properly. They also prepare the working face for trucks to arrive. The remaining operators start work between 7:00 and 9:00 am. The operators who close the landfill leave the site between 6:00 and 6:30 p.m. The operators' main duty is to

ensure that the waste is properly dumped and that it is stored according to governmental regulations and company policy.

One landfill operator, unlike the other operators, spends half of his time at the disposal site and half in the office. When this operator is not at the working face, he aids the checker/scale house employee by opening and running the scale house until the checker/scale house employee arrives for the day and by helping to maintain the special waste accounts and certificates. This operator reviews customer accounts to determine if they have a current or expired special waste certificate on file with the landfill. Upon finding customers who have expired certificates or certificates near expiration, this operator contacts them to renew their certificate. If the customer renews their certificate, the operator learns from the customer which hauling company will be used. He then contacts the customer's hauling company to ensure that the company will haul waste for the customer. This operator may also contact customers if information on the special waste manifest is incorrect or incomplete. The hauling operation is one of several customers that the operator may contact regarding special waste.

2. Checker/Scale House Employee

The checker/scale house employee is not required to wear the company-issued uniform. Her main duties are to weigh trucks as they enter the landfill, generate scale tickets, screen trucks for items ineligible for disposal, and answer the telephone. The checker/scale house employee interacts with the hauling facility drivers similarly to drivers for other customers. Her interaction with the drivers is limited to conversations necessary to weighing their trucks. The checker/scale house employee may also interact with customers on the telephone in order to resolve problems. Additionally, the checker/scale house employee talks on the telephone with the hauling facility employees about issues related to waste hauling. However, she also has

similar conversations with other customers. The checker/scale house employee works from 8:00 a.m. to 6:00 p.m. and is paid hourly.

3. The Waste Disposal Process At The Landfill

Hauling operation drivers follow the same basic process each time they arrive at the landfill. After weighing the truck, the driver proceeds, based on past experience or by following posted signs, approximately one half to three-quarters of a mile to the working face of the landfill. Upon arrival at the working face, the driver then proceeds to dump his load. The driver knows where to dump the load based on past experience or with help from the landfill operators.

Landfill operators rarely interact with hauling facility drivers because most hauling facility drivers know where to dump the waste without assistance. On certain occasions, however, hauling facility drivers are unable to dump their loads due to some equipment malfunction or other type of problem. In these instances, the operators may help resolve the problem with the truck. For example, the operator may use the backhoe to apply pressure to the truck door to allow the door to release. Landfill operators do not extend this assistance to the drivers for other customers due to liability concerns.

After dumping the load, the trucks then exit the landfill. The time needed to go through the entire dumping process depends upon several factors, such as the type of waste being dumped and how busy the landfill is. However, a truck can complete the dumping process in 15 minutes.

As the waste is being dumped throughout the day, landfill operators use the bulldozer to spread out the garbage in a “lift”, a two-foot deep layer of garbage. After the “lift” is created, the landfill operators run over it with the compactor in order to compress it as densely as possible. When the last truck of the day has emptied its load and the trash has been sufficiently

compacted, the operators perform the “daily cover.” The “daily cover” is the process by which the trash is covered at night to control odor, vector, insects, dogs, and birds. The cover used for the trash consists of tire chips, tarps, hydromulch material, or any other “clean” material useful in the process.

IV. ANALYSIS

In evaluating the appropriateness of a bargaining unit under Section 9(b) of the Act, the Board is given broad discretion to decide whether the unit most appropriate for the purposes of collective bargaining should be the employer unit, craft unit, plant unit, or subdivision to assure employees the fullest freedom in exercising their rights guaranteed by this Act. The statute does not require that a unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit. Rather, the Act only requires that the unit be “appropriate.” *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951). A union is, therefore, not required to seek representation in the most comprehensive grouping of employees unless “an appropriate unit compatible with that requested does not exist.” *P. Ballantine & Sons*, 141 NLRB 1103 (1963); *Bamberger’s Paramus*, 151 NLRB 748, 751 (1965); *Purity Food Stores, Inc.*, 160 NLRB 651 (1966). In determining whether a petitioned-for unit is appropriate, the unit sought by the petitioning union is always a relevant consideration. *Lundy Packing Co.*, 314 NLRB 1042, 1043 (1994).

A. SINGLE FACILITY VS. MULTI-FACILITY

As referenced above, the Petitioner seeks a multiple-facility unit consisting of all drivers, mechanics/shop employees, office clericals, and dispatcher at BFI’s hauling company facility and all operators and check/scale house employees at BFI’s landfill in Abilene, Texas. The Employer maintains that only two separate units would be appropriate. The Board has long held

a single facility unit is presumptively appropriate for collective bargaining. *D&L Transportation*, 324 NLRB 160 (1997); *J&L Plate*, 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41, 42 (1988). The presumption in favor of a single facility unit may be overcome “by a showing of functional integration so substantial as to negate the identity of the single facility.” *Bowie Hall Trucking*, at 41. In determining whether the presumption has been rebutted, the Board considers several factors such as degree of employee interchange; centralized control over daily operations and labor relations; similarity of employee skills, functions, and working conditions; geographic separation; and bargaining history if any exists. *New Britain Transportation Co.*, 330 NLRB 397 (1999); *Esco Corp.*, 298 NLRB 837, 839 (1990). The burden is on the party seeking the multiple facility unit to present evidence sufficient to overcome the presumption. *J&L Plate*, 310 NLRB 429 (1993).

1. Employee Interchange and Interaction

Among the factors considered in determining whether the single facility presumption has been rebutted, the Board views the absence of employee interchange as a critical factor. *First Security Services Corp.*, 329 NLRB 235 (1999). The Board has stated that “a relatively low degree of actual employee interchange among different plants [is] a strong indication that there is no collective ‘community of interests’ among a proposed multi-plant bargaining unit.” *Cell Agricultural Manufacturing Co.*, 311 NLRB 1228, 1238 (1993) citing *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1981). The record does not reflect significant employee interchange and interaction between hauling facility employees and landfill employees.

The record reveals only two transfers of employees between the two facilities. In one instance, a landfill office employee was transferred to the hauling company and then returned to the landfill two months later. In the second, some light-duty hauling facility employees were

sent to the landfill to help collect wind-blown paper. This occurred on one occasion more than eight years ago. These two isolated incidents fail to demonstrate substantial employee interchange sufficient to rebut the single facility presumption.

Additionally, the record shows only minimal interaction between the employees of the two facilities. Hauling facility employees do not work at the landfill and landfill employees do not work at the hauling facility. The two facilities have conducted joint training one time. When dumping waste, the interaction between the drivers and landfill employees consists of the driver taking a charge ticket from the checker/scale house employee and the occasional assistance to the drivers by landfill employees. Although the two facilities interact daily by telephone, their conversations are typical of telephone conversations with other customers.

In its brief, the Petitioner argues that the two facilities share equipment, employee services, and building space. Some sharing occurs between the two facilities, but it is minimal and mostly not of a daily, weekly, or even monthly nature. For example, the hauling facility has occasionally borrowed a landfill grader to repair roads at its facility or a dump truck when the hauling facility is unusually busy. The record does not reflect the frequency of the hauling company's use of a landfill grader or dump truck. Likewise, while the hauling facility stores some of the landfill's long-term files in its offices, the record does not reveal how many or for how long. While the hauling facility invites landfill employees to two or three barbecues a year and has purchased Thanksgiving and Christmas turkeys and hams for landfill employees on behalf of the Employer, such sharing only occurs on limited, special occasions. Thus, although demonstrative of some interaction, these limited instances cited by the Petitioner fail to show that the facilities are so functionally integrated that the two facilities have lost their separate

identity and the single location presumption has not been rebutted. See *Cargill, Inc.*, 336 NLRB No. 118 (2001); *R&D Trucking, Inc.*, 327 NLRB 531 (1999).

In its brief, the Petitioner points to another factor that it argues overcomes the presumption for a single-facility unit. The landfill stays open late approximately two nights a week for the Employer. The landfill does this for only one other hauling company after holidays. Nonetheless, this unique benefit is not sufficient to overcome the weight of the record that reveals a lack of facility integration and centralized control. See *United Operations*, 338 NLRB No. 18 (2002) (employees in different departments of the same employer sporadically helping each other showed a “spirit of cooperation or civility” not an overlap of job function and did not, therefore, demonstrate a community of interest).

2. Centralized Control

The record evidence reveals that the two Abilene facilities are not centrally controlled. Allen, the general manager of the West Texas Division and the only individual with authority to manage both facilities, is rarely, if ever, involved in daily management of the facilities. Allen does not maintain an office in either facility, and generally only visits the two sites once a month for two or three days. Although Allen occasionally participates in meetings telephonically with managers of the two facilities, he has been involved in only one employment action, the hiring of Facility Manager Kuykendall over the hauling facility. The two facilities independently report their profits and losses to Allen in Amarillo. The record reveals that the only financial interaction between the two facilities is the landfill’s billing of the hauling company for dumping fees.

Kuykendall and Davis have independent authority to manage their particular facility without the other’s or Allen’s involvement. Each has authority to hire, transfer, suspend, lay off,

recall, promote, discharge, assign, reward, or discipline other employees at their own facility. Kuykendall and Davis have the authority to recommend discipline at both the hauling facility and the landfill, however, the record shows that Kuykendall and Davis have never recommended that an employment action be taken against the other's employees. When new employees are hired, each manager has the authority to set initial wages based on the market wage rate and new hire's skill level.

Kelly and Davis' autonomy is underscored by the fact that they can alter employment policies to conform with the unique situations at their respective facilities. For example, on February 10, 2004, hauling facility management issued a revised version of the attendance policy as stated in the employee handbook. Landfill management did not implement this revised attendance policy.

The Board has found a lack of centralized control in circumstances similar to the present case. *Cell Agricultural*, 311 NLRB 1228. In that case, the employer was seeking a multiple-facility unit. The evidence showed that employees were governed by the same policies and received the same benefits. Although managers had the authority to participate in hiring and firing at both facilities, the evidence demonstrated that in practice each manager made supervisory decisions independent of the other. As in *Cell Agricultural*, the record shows that managers of the two facilities are autonomous of one another, and therefore the facilities are not centrally controlled.

3. Similarity of Skills, Functions and Working Conditions

Some skills, functions, and working conditions are similar at both facilities because both locations are engaged in waste processing. All employees enjoy the same benefits, receive the same employee handbook, are paid within the same general range, and use the same type of time

card system. Hauling facility drivers and mechanics wear the same uniforms as the landfill operators and operate heavy machinery.

However, the record shows several differences between the hauling facility employees and the landfill employees. For example, drivers and mechanics for the hauling company are required to have a CDL. To obtain a CDL, a hauling facility driver must pass state-mandated tests before they may drive certain types of vehicles. In contrast, no landfill employees are required to have a CDL.

Most drivers for the hauling facility begin their day at 5:00 a.m., almost two hours earlier than the first landfill employee. Daily schedules for hauling facility drivers vary depending on the length of their route or problems they encounter. Drivers spend most of their day driving city streets collecting waste and dealing with a wide range of customers. Hauling facility drivers are required to be familiar with multiple routes so that they can provide efficient service to customers and fill in for absent co-workers.

On the other hand, landfill operators spend all day managing incoming trash. They are trained on the job to oversee the dumping of waste and compact the waste as needed. They generally interact with very few customers.

Because the record does not reveal a substantial similarity between skills, function, and working conditions between the two facilities, the Petitioner has not met its burden to overcome the presumption of a single-facility unit.

4. Geographic Separation and Bargaining History

The hauling company is located approximately one and one-half miles from the landfill. Additionally, there is no prior bargaining history between the Employer and the Petitioner.

Based on the record, I conclude that the Petitioner has not rebutted the presumption of a single-facility unit, and therefore, decline to find a multiple-facility unit appropriate. Although the record shows some similarities in skills, functions, and working conditions at both facilities, and that both are in close proximity to each other, these similarities are outweighed by evidence that shows minimal employee interchange and interaction, substantial local managerial autonomy, independent daily management, and limited sharing of resources. For example, Kuykendall and Davis manage their facilities independently of the other. Neither have hired, fired or disciplined the other's employees. Similarly, the two facilities independently report their profits and losses to the regional headquarters. Likewise, employees from the hauling facility do not interchange jobs with the landfill employees and vice versa. Because the record lacks evidence to show functional integration so substantial as to negate the identity of the single facility, I find that the Petitioner has not rebutted the single facility presumption. Accordingly, I find a single-facility unit appropriate.

B. OFFICE CLERICALS

The Petitioner seeks a unit that includes office clericals. The Petitioner also refers to one of these office clericals as a dispatcher and seeks the dispatcher's inclusion as well. The Employer maintains that the office clericals should be excluded from the unit because they do not share a community of interest with the other petitioned-for employees. The Employer also contends that the remaining office clerical, the dispatcher, is a supervisor.

1. Sales/Customer Service Representative

The Board has long held that office clericals are typically excluded from a unit including other employees. *PECO Energy Co.*, 322 NLRB 1074 (1997). The record clearly shows that the sales/customer service representative performs office clerical duties and lacks a community

of interest with the proposed unit. She works solely in the hauling office, is not required to have a CDL, and works different hours than the drivers and mechanics. Although all hauling facility employees are supervised by Kuykendall and Kelly, drivers report to Plank and mechanics report to Greenough. The sales/customer service representative reports to neither. More importantly, her daily duties, selling the Employer's services, providing information to potential customers, drafting and delivering service agreements, and answering phones, reflect duties that the Board has found to be uniquely "office clerical." See *Dunham's Athleisure Corp.*, 311 NLRB 175 (1993); *Mitchellace, Inc.*, 314 NLRB 536 (1994); *Virginia Mfg. Co.*, 311 NLRB 992 (1993); and *PECO* supra. The record reflects almost no interaction with the employees in the proposed unit. Thus, I conclude that the sales/customer service representative should be excluded from the bargaining unit because she lacks a community of interest with the other members of the proposed bargaining unit.

2. Dispatcher

The Board has stated that "workers who perform clerical duties in close association with the production process and production employees are included in a production and maintenance unit as "plant clericals," even though they may exercise secretarial skills and are classified as "clerks." *Brown and Root, Inc.*, 314 NLRB 19, 23 (1994). The dispatcher performs duties that are functionally integrated with those performed by the drivers and mechanics. See *Hamilton Halter Co.*, 270 NLRB 331 (1984) (the Board found that clericals who collected time cards, transcribed sales orders to facilitate production, maintained supplies, and ordered forms were properly joined in a unit with production employees).

As in *Hamilton Halter*, the dispatcher in the instant case spends most of her time performing duties that are functionally integrated with the production process. For example, she

spends most of her time preparing and issuing route sheets for the drivers, ensuring the accuracy of the drivers' and mechanics' time sheets, maintaining adequate supplies and forms for drivers to use, responding to customer complaints regarding drivers, assigning "call-in" work to drivers when a customer complains about a missed pick-up, and preparing service tickets for the drivers to distribute to customers. The dispatcher spends the remainder of her time doing office clerical work such as filling out "lost business forms."

The dispatcher shares a common supervisor with the drivers, Kelly. The drivers are jointly supervised by Kelly and Plank. She also shares the same fringe benefits as the drivers and mechanics and has comparatively similar wages. Although the dispatcher is not licensed to drive the different trucks at the hauling facility, she punches the same time clock as the drivers and mechanics and has considerable contact and interaction with them. Although her work situs, conditions, skills, and functions are different from the drivers, the community of interest established by the existence of the other factors justifies her inclusion in the bargaining unit. As the party asserting her disqualification, the Employer must prove the dispatcher's office clerical status. *West Oakland Home, Inc.*, 307 NLRB 288 (1992). I find that the Employer has not met that burden.

C. SUPERVISOR

In addition to contending that the dispatcher should be excluded from the unit because she is an office clerical, a position not supported by the record, the Employer argues that the dispatcher should also be excluded as a 2(11) supervisor. "Supervisor" is defined in Section 2(11) of the Act as any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to

recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use independent judgment.

Possession of just one of the 2(11) indicia is sufficient to confer supervisory status. ***Baby Watson Cheesecake***, 320 NLRB 779 (1986). Additionally, where “the possession of any one of the aforementioned powers is not conclusively established, or ‘[i]n borderline cases,’ the Board looks to well-established secondary indicia, including the individual’s job title or designation as a supervisor, attendance at supervisory meetings, job responsibility, authority to grant time off, etc., whether the individual possesses a status separate and apart from that of rank-and-file employees.” *See id.* at 784 (citing ***NLRB v. Chicago Metallic Corp.***, 794 F.2d 527, 531 (9th Cir. 1986)). It is well established that the assignment of work to another employee that is routine in nature does not establish supervisory status. ***Byers Engineering Corp.***, 324 NLRB 740 (1997). To establish supervisory status, there must be a showing that the individual exercises independent discretion in the assignment of work. To direct other workers responsibly, a supervisor must be “answerable for the discharge of a duty or obligation” or accountable for the work product of the employee he directs. ***NLRB v. KDFW-TV, Inc.***, 790 F.2d 1273, 1278 (5th Cir.1986).

An employee is a statutory supervisor if he or she has (1) the authority to engage in any of the supervisory functions, (2) his or her exercise of supervisory authority “is not of a merely routine or clerical nature, but requires the use of independent judgment,” and (3) the authority is held in the interest of management. ***NLRB v. Kentucky River Comm. Care, Inc.***, 532 U.S. 706, 713 (2001) (citing ***NLRB v. Health Care & Retirement Corp. of America***, 511 U.S. 571, 573-74 (1994)). The Board has cautioned that it must be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights that the Act

is intended to protect. *Phelps Community Medical Center*, 295 NLRB 486, 492 (1989); *Adco Electric*, 307 NLRB 1113, 1120 (1992), enfd. 6 F.3d 1110 (5th Cir. 1993); and *Chevron U.S.A.*, 309 NLRB 59, 62 (1992). The burden of proving supervisory status rests squarely on the party asserting that claim. *Bennett Industries*, 313 NLRB 1363 (1994). I find that the Employer has not met that burden.

Notwithstanding the dispatcher's ability to assign work to drivers, the record does not show that she exercises independent judgment when making the assignments. Indeed, the record reflects that the dispatcher's assignment responsibilities are routine and do not require her to use independent judgment. For example, on a weekly basis, the dispatcher must assign specific weekly pickup routes for rear-load and side-load drivers based on training she received from Kelly, who had previously worked as a dispatcher. Management assigns each truck to a specific route. The record reveals that Kelly is involved in assigning trucks to routes. The weekly routes and customers do not vary, and therefore, the dispatcher is not required to use any judgment regarding which trucks are assigned to which customers.

The only instance of the dispatcher making changes to the weekly side- and rear-load assignments is when a driver is absent. In such a situation, the dispatcher will assign a driver to fill in for the absent driver. The dispatcher makes the driver reassignments based on the driver's knowledge of the route. In instances where a driver misses a pickup, the dispatcher will contact a driver in the vicinity of the missed customer to do the pickup.

The dispatcher's authority to assign routes is limited and is based mainly on the training she received from Kelly. The record reflects that if all drivers familiar with one particular route are absent the same day, the dispatcher will ask Kelly for guidance. The dispatcher does not make such judgments. Likewise, if a route must be skipped for a day due to lack of drivers,

Kelly makes the determination as to which route is passed over, not the dispatcher. Thus, the dispatcher's authority to reassign routes is not unchecked.

The dispatcher makes daily assignments for roll-off drivers based on customer pickup requests in relation to the geographic area usually covered by each driver. For example, the dispatcher would be less likely to assign a daily roll-off route to a driver unfamiliar with that route's geographic area. The dispatcher will assign drivers to daily roll-off routes based on the customer's location. A customer located far from the office will be assigned before a customer closer to the office. If a customer is missed or a customer cancels a pickup, the dispatcher must reassign routes based on the driver's location. The record shows that this occurs about once a week. The record shows that when there are too many customers for the roll-off drivers to service in one day, the dispatcher again seeks the assistance of Kelly and does not make the decision on her own.

On brief, the Employer argues that the dispatcher is a supervisor because she assigns driver routes and because she granted time off on one occasion. The Employer relies on case law that is distinguishable from the instant facts. For example, in *Consolidated Freightways Corp.*, 196 NLRB 807 (1972), although the dispatcher at issue assigned work, she also ordered overtime, granted leave extensions, and attended supervisory meetings, all of which are absent in the instant case. Similarly, in *Mission Petroleum Carriers, Inc.*, 229 NLRB 1276 (1977), in addition to assigning workloads, the dispatcher at issue hired part-time employees and approved employee leave. The dispatcher in the instant case does not have the authority to hire and has only granted employee leave on one occasion.

Indeed, the dispatcher's duties in the instant situation are similar to those in *Clock Electric, Inc.*, 338 NLRB No. 110 (2003), where the Board denied a foreman's supervisory

status because the foreman did not exercise independent judgment to make employee assignments, even though it did require knowledge of employees' skills and abilities. Instead, the foreman relied on blueprints or drawings developed by primary project managers to make the assignments. The Board determined that making such assignments based on such criteria and formulaic knowledge was routine in nature and therefore did not require the use of independent judgment necessary to establish supervisory status. *Id.* at 32. As with the project managers in *Clock Electric*, the dispatcher here relies on preset criteria routine in nature, i.e., geographic location and knowledge of each driver's route, to construct the daily and weekly route assignments for hauling facility drivers. Such decision-making does not require independent judgment sufficient to make her a supervisor.

The instant facts differ from another recent Board case where supervisory authority was found. In *Palagonia Bakery Company*, 339 NLRB No. 74 (2003), the Board found that certain employees used independent judgment when making assignments based on their knowledge of employees' abilities and their capacity to operate certain machines. However, the Board was influenced by other factors not present in the instant case. The disputed employees in *Palagonia*, unlike the present facts, had the authority to recommend changing employees' working hours and to reassign employees from one department to another. Additionally, the salary of the disputed employee was considerably higher than the other members of the proposed unit, he told employees when to take lunch, and he had access to a private break room. All of these additional factors relied on by the Board in *Palagonia* to find supervisory status are absent here.

Though the dispatcher granted time off to the employees subpoenaed to testify at the instant representation hearing without seeking a supervisor's approval, the record reveals that the

dispatcher's decision in this instance is atypical. Usually, the dispatcher requires the employee requesting time off write his name on a white board to which supervisors have access. The supervisor, upon reading the names, notes next to the employee's name if he has a problem with the request. The dispatcher's granting of time off without approval in this one isolated and atypical instance does not make her a supervisor. See *Baby Watson Cheesecake*, 320 NLRB 779.

Lending weight to my decision that the dispatcher is not a supervisor is the fact that she is the lowest paid employee at the hauling facility. She is paid weekly instead of bi-weekly, unlike the other supervisors, and never participates in meetings exclusive to supervisors. The record reflects that the dispatcher has reported driver violations to management, such as a violation of company policy or refusal to carry out an assignment, and that at least one employee has been suspended after she reported the incident to Kelly. However, the Employer offered no evidence as to whether the dispatcher recommended the discipline in that instance, or in any instance for that matter, or if she simply reported the violation. The Employer presented evidence that the dispatcher issued written discipline on one occasion, however, the record is unclear whether the dispatcher filled out the disciplinary form on her own initiative or at the behest of management.

Thus, based on the record, I find the Employer has not met its burden to prove the dispatcher is a supervisor and, therefore, will include her in the unit. The dispatcher assigns work based solely on preset, routine patterns and practices, resulting from training received from Kelly.

V. SUMMARY

Based on the foregoing and my review of the record, I have concluded that the multiple facility unit is not appropriate because the Petitioner has failed to overcome the presumption favoring a single facility unit. Because I determined that the hauling facility and the landfill are independently appropriate, and because the Petitioner indicated a willingness to proceed were I to find a unit different from the one it proposed, I find the two separate bargaining units appropriate as described below. I also conclude that the sales/customer service representative at the hauling company is an office clerical, and therefore, does not share a sufficient community of interest with the other proposed bargaining unit members. I also conclude that the dispatcher position is functionally integrated with the drivers and sufficient to establish a community of interest. Finally, I conclude that the dispatcher is not a 2(11) supervisor because she does not exercise independent judgment when making driver assignments.

VI. CONCLUSIONS AND FINDINGS

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulated, and I find, that the Employer, a Delaware corporation, is engaged in waste disposal with facilities located in Abilene, Texas. During the past twelve months, the Employer performed services valued in excess of \$50,000 directly for customers located outside the State of Texas. Based on the foregoing, I find the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner claims to represent certain employees of the Employer.
4. The parties stipulated to the petitioner's status as a labor organization.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer constitute two appropriate units for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

A. Hauling Facility:

Included: All drivers, mechanics/shop employees, and dispatcher located at the Employer's hauling facility at 5001 Pine Street in Abilene, Texas.

Excluded: All confidential employees, guards, office clerical, and supervisors as defined by the Act.

B. Landfill Facility:

Included: All operators and check/scale house employees located at the Employer's landfill at 277-83 North and FM 3034, Abilene, Texas.

Excluded: All confidential employees, guards, office clerical, and supervisors as defined by the Act.

VII. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the Communications Workers of America, Local Union No. 6202.

The date, time, and place of the election will be specified in the notice of election that the

Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Fort Worth Regional Office, Federal Office Building, Room 8A24, 819 Taylor Street, Fort Worth, Texas 76102 on or before July 1, 2004. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 817-978-2928. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club*

Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST on July 8, 2004. The request may **not** be filed by facsimile.

Dated: June 24, 2004

Curtis A. Wells, Regional Director,
National Labor Relations Board
Region 16
819 Taylor Street - Room 8A24
Fort Worth, TX 76102